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**HEADLINE:** Jerusalem Suicide Attack Halts Israeli-Palestinian Talks; Many Al Qaeda in Pakistan

**BYLINE:** Chris Matthews; Dana Lewis; William Arkin

**GUESTS:** Jeff Barak; Raanan Gissin; Hasan Abdel Rahman; Orrin Hatch; George Fletcher;  
**Nasser Al-Kidwa**

**HIGHLIGHT:**

Another suicide bomber in Jerusalem put an end to Israeli- Palestinian talks, and the bomber is reported to have been a former Palestinian policeman, jailed by the Palestinian authority last month after Israel provided information he was planning an attack. Today "The New York Times" reports that American troops may pursue al Qaeda fighters into Pakistan. Chris Matthews discusses terrorist attacks committed by the Al Aqsa Brigade with Palestinian representative Hasan Abdel Rahman.

**BODY:**

THIS IS A RUSH TRANSCRIPT. THIS COPY MAY NOT BE IN ITS FINAL FORM AND MAY BE UPDATED.

CHRIS MATTHEWS, HOST, HARDBALL: A Palestinian suicide bomber strikes downtown Jerusalem, bringing truce talks to a halt. Is Yasser Arafat to blame? And an update from inside Afghanistan. How many al Qaeda are left, and where does the fight go from here?

I'm Chris Matthews. Let's play HARDBALL.

Here's what's happening tonight. A Palestinian suicide bomber linked to Yasser Arafat's al Fatah movement strikes in Jerusalem, killing two, wounding over 60 and derailing truce talks. A car bomb kills nine outside the American embassy in Peru days before President Bush is scheduled to arrive in the country. The commander of ground forces in Afghanistan says that U.S. troops may pursue al Qaeda fighters across the border into Pakistan.

Those headlines, plus the big story tonight: Is Yasser Arafat unwilling or unable to control the terrorists that struck Israeli civilians again today? And the HARDBALL debate. Columbia Law professor George Fletcher argues that Israel's occupation of the West Bank and Gaza is perfectly legal, while the Palestinian representative to the U.N. says it's a crime. And Senator Orrin Hatch will be here with his take on President Bush's Mideast policy.

We begin with this report on today's Palestinian terror attack from NBC correspondent Dana Lewis.

(BEGIN VIDEOTAPE)

DANA LEWIS, NBC CORRESPONDENT (voice-over): In the heart of Jerusalem, pandemonium, another suicide bomber on a street filled with shoppers. Police search parked cars, fearing a second bomb, and round up Arabs.

UNIDENTIFIED ISRAELI: And blood. And no good.

LEWIS: This Israeli man was working in a bakery when the bomb went off a few feet away. We found him an hour and a half later, still shaken.

UNIDENTIFIED ISRAELI: What I do? What I do? In the country no help to the people.

LEWIS: Israeli authorities say the bomber was a former Palestinian policeman, jailed by the Palestinian authority last month after Israel provided information he was planning an attack. But last week, when Israeli forces swept into Palestinian areas, he was released.

(on camera): The pressure is tremendous on the Israeli government to do something to protect its citizens, but in the government, confusion over what to do to stop this wave of terror.

(voice-over): Tonight's Israel's police minister blamed Yasser Arafat and called for an end to cease-fire talks.

UZI LANDAU, ISRAELI POLICE MINISTER: It's a prescription for much more terrorism in the future. We just simply have to uproot it. Don't negotiate with it.

LEWIS: U.S. mediator Anthony Zinni carried an urgent message to Arafat, repeated by President Bush today.

GEORGE WALKER BUSH, PRESIDENT OF THE UNITED STATES: Mr. Arafat must do more to stop the violence in the Middle East.

LEWIS: After two suicide bombings in as many days, only tonight did Arafat speak out, promising to put an end to the attacks. Israeli Prime Minister Sharon canceled talks scheduled for tonight. And as Israel tries to recover from this latest bombing, security sources are warning of more possible attacks tomorrow.



Dana Lewis, NBC News, Jerusalem.

(END VIDEOTAPE)

MATTHEWS: For more on today's attack in Israel, we're joined from Jerusalem by Jeff Barak of the "Jerusalem Post."

Jeff, I've noticed a pattern here. Yesterday it was Islamic Jihad. Today it Al Aqsa Martyrs' Brigade, very closely associated with Yasser Arafat himself.

JEFF BARAK, "JERUSALEM POST": To be honest, for most Israelis, it's really quite irrelevant who's behind these attacks. What's quite clear is that Yasser Arafat and the Palestinian authority are not making any effort to stop them.

MATTHEWS: Well, does that tell you he has a policy that he doesn't care if there's a cease-fire? He doesn't care if the Israeli government tries to stop him from going to the Arab League summit in Beirut?

BARAK: That's right. I don't think he does care. I think his calculation is he can continue with the violence, basically, for as long as he wants. He doesn't think Israel is prepared to overthrow him. And until he really believes that his rule is in jeopardy, I think we're going to see this pattern just continuing.

MATTHEWS: Well, it seem like, ironically, his popularity within the Palestinian world seems to grow with the more he's mistreated, you might say, by the Israelis. What incentive is there for him to stop the violence, if you think about it?

BARAK: I think the only incentive for him to stop the violence is to realize that if he doesn't, he'll -- he will just be kicked out of the Palestinian areas and that his leadership of the Palestinian people will end. Otherwise, I really don't see an incentive for him.

MATTHEWS: But if the Israelis decapitate this man, either assassinate him or dump him out of the country unceremoniously, doesn't that make him a hero and doesn't it make any chance of a cease-fire cease to exist?

BARAK: Well, to be quite honest, I can't see much chance for a cease-fire at the moment. Ever since Vice President Cheney left the area, we had one suicide bomb yesterday killing seven people, another one today in the center of Jerusalem. There really doesn't seem to be much option for a cease-fire as long as Yasser Arafat is in charge of the Palestinian authority.

MATTHEWS: Do the people of Jerusalem, the people of Israel -- do they take note of the fact of which terrorist group each of these terrorists come -- suicidal terrorists come from? Do they note that one's from the Islamic Jihad, one's from Hamas and one's from Al Aqsa Brigade? Does that matter to the Israelis?

BARAK: No. From now on, it really doesn't matter. This whole thing is coming from the Palestinian authority, and no Israeli cares who is responsible. The question is, what can Israel do to prevent such things in the future?

MATTHEWS: Do you think there's any chance that Arafat will be kept from going to the Islamic -- or the Arab summit or the Arab League in Beirut this week?

BARAK: I think there's every chance, or there's a chance that he might be let to go to Beirut but he won't be let back into the areas after the summit is over.

MATTHEWS: So you believe that's the policy of the government right now, of Israel, to keep -- if he makes the mistake of going there, you will shut the door behind him.

BARAK: I think there's quite a likelihood of that. I don't think anybody gains from Yasser Arafat being in Ramallah. And so if he wants to go to Beirut, I think the feeling might be, "Well, let him go to Beirut and then stay there."

MATTHEWS: OK, thank you very much for joining us from Jerusalem, Jeff Barak of the "Jerusalem Post."

This morning, another reminder of the threat to Americans overseas. Nine people were killed and thirty injured when a car bomb exploded near the American embassy in Lima, Peru. The blast came days before President Bush is expected to visit Peru. And while no one has claimed responsibility, intelligence suspects that the Maoist Shining Path terror group is responsible.

President Bush had this reaction.

(BEGIN VIDEO CLIP)

BUSH: Two-bit terrorists aren't going to prevent me from doing what we need to do, and that is to promote our friendship in the hemisphere. Our neighborhood is important to us. Peru's an important country. President Toledo has been a reformist. You know, obviously, work within the democratic system. And you bet I'm going.

(END VIDEO CLIP)

MATTHEWS: Well, unfortunately, the Shining Path is a very frightening terrorist group, not a two-bit group.

More word from Afghanistan that hundreds of -- if not thousands of al Qaeda fighters are slipping away from the country and the grasp of U.S. forces. And "The New York Times" reports that American troops may pursue those fighters into Pakistan. Here's the quote. "Major General Franklin Hagenbeck of the 10th Mountain Division said that chasing al Qaeda and the Taliban into Pakistan would be a last resort carried out with the approval of Pakistani leaders."

NBC military analyst Bill Arkin is in Kandahar, Afghanistan. Earlier today, I asked him about the possibility of U.S. troops crossing that border into Pakistan.

(BEGIN VIDEOTAPE)

WILLIAM ARKIN, NBC NEWS MILITARY ANALYST: Well, it seems to me that that would be something that would have to be worked out with the Pakistani government. But I would also imagine that that would be the end of Musharraf. I can't imagine U.S. forces operating inside Pakistan. But I think it's also an admission on the part of the general that, certainly, Operation Anaconda has not been the success that they've made it out to be, that hundreds, if not thousands, of al Qaeda and Taliban have gotten away, as they have for other operations, and that we'll be seeing more in the future.



MATTHEWS: Where are they?

ARKIN: Where are they? Who knows, Chris. I think that the answer to the question, partially, is that the Taliban have completely blended into Afghan society. But the hard-core al Qaeda, who are mostly foreigners -- Pakistanis, Chechnyans, Arabs -- those people, I think, are either hiding in the mountains still -- and there are various pockets in Afghanistan, not just in the east but also in the central part of the country. And I think after that, you have to also consider that there is a very porous border between Afghanistan and Pakistan.

And I don't imagine that U.S. forces are going to be crossing that border, but I do think that there's going to be increasing pressure upon the Pakistani government to take military action against al Qaeda and against the Taliban who might be going across the border. But then I think you're really talking about a higher level of military activity than we've seen to date.

MATTHEWS: What about a possible link-up, a joint operation by -- joint maneuvers and border controls by the United States, working with the Pakistanis? General Tommy Franks mentioned that in the wire stories this morning.

ARKIN: Well, you know, I just came from Pakistan, Chris, and I just can't imagine that that there's going to be much more military presence in the border areas than there already are without a full-scale war.

The fact of the matter is, what is it exactly that you're expecting that the Pakistanis are going to be going after? Al Qaeda is a very amorphous, decentralized body. The whole Pakistani border area is essentially an area that's under tribal control, that's very lawless, that is including all sorts of groups that may or may not be associated with the Taliban or al Qaeda and may just be natural enemies of the Pakistani government.

Are we going to be basically making the Pakistanis then, therefore, giving them free reign to conduct military operations in this area under the name of a war against terrorism? I don't think that that's very likely.

So in fact, I think the statements by General Franks and the statements by General Hagenbeck don't make any sense. I don't think the U.S. is going to be operating inside Pakistan, and I don't imagine that the Pakistani government is going to be taking up arms against this entire Baluchi state, of which they have very tenuous control over and don't want to particularly fracture any further than it already is.

MATTHEWS: Let's talk about the discussion that began the other day, when Thomas Friedman of "The New York Times," who's gotten a lot of respect for his commentary this year during the war, suggests that we have to put troops both in the Palestinian territories adjoining Israel to keep peace there, but he also suggested we have to put a permanent deployment of troops in Afghanistan.

What is your sense as to the advisability of the United States becoming a permanent military garrison in Afghanistan?

ARKIN: Well, first of all, Chris, it's just not going to happen. No one in the Defense Department leadership wants U.S. forces cemented into this country. In fact, I think one of the

reasons why they have described the U.S. mission as being circumscribed to topping the Taliban and going after al Qaeda is because when that mission, that defined and confined mission is finished, they want to be out of Afghanistan.

So Tom Friedman can say it from his desk in New York, but I think on the ground here there's a great desire not to get embroiled into the future of this country on the part of the United States. And I think for right now, you see people basically biding their time, waiting to see what's going to happen in Afghanistan, and before they declare their loyalties, before they declare which way they're going to go. I don't think the U.S. military is going to have any influence over that.

I know that everyone says that there has to be security in order for there to be prosperity and change in Afghanistan. But I think that probably the United States should let the international community, let the NGOs, let the international world work on developing Afghanistan economically, changing the society in Afghanistan, improving the position of women in Afghanistan.

We've done as much as we can do with the military forces that are already here. Fighting down to the last al Qaeda guy is just not going to accomplish very much more. It seems that what Afghanistan needs is a makeover, and the military is just not going to be the force to achieve it.

MATTHEWS: OK, thank you very much, Bill Arkin, MSNBC military analyst, who's in Kandahar, Afghanistan.

(END VIDEO CLIP)

Those are the headlines tonight, but the big story coming back on HARDBALL: A Palestinian suicide attack derails truce talks in the Mideast. Has Yasser Arafat missed his last chance to stop the terror? And later, the HARDBALL debate. Columbia law professor George Fletcher argues that Israel's occupation of the West Bank and Gaza is perfectly legal. The Palestinian representative to the United Nations says it's not. And Senator Orrin Hatch will be here with his take on how America should deal with the Mideast.

You're watching HARDBALL.

(COMMERCIAL BREAK)

MATTHEWS: The big story tonight: Palestinian violence derails cease-fire talks. Israeli officials canceled the latest round of truce talks scheduled for today after a Palestinian suicide bomber killed 2 and wounded at least 60 people in the heart of Jerusalem. The Al Aqsa Martyrs Brigade, a militia linked to Yasser Arafat's Fatah movement, claimed credit for the bombing.

President Bush had some stern words for the Palestinian leader.

(BEGIN VIDEO CLIP)

BUSH: Set some strong conditions, and we expect Mr. Arafat to meet those conditions. I frankly have been disappointed in his performance. I'm hopeful, however, that he listens to what the vice president told him and said that in order for us to have influence, in terms of achieving any kind of peaceful resolution, he must -- he, Mr. Arafat -- must do everything in his power to stop the violence.



(END VIDEO CLIP)

MATTHEWS: Raanan Gissin is a senior adviser to Israeli prime minister Ariel Sharon, and Hasan Abdel Rahman is the Palestinian representative here in the United States.

Let's go to Mr. Gissin, who's in Jerusalem. Mr. Gissin, what will be the impact of this latest -- latest atrocity in the streets of Jerusalem on the talks?

RAANAN GISSIN, SHARON SENIOR ADVISER: Well, I'm afraid that Yasser Arafat is quickly reaching that moment of truth where there will be no return. We've seen him take no action whatsoever, not a declaration for a cease-fire, not issuing orders to his troops. And Tanzim, by the way, is not just associated with Arafat, it's an organization that is on his payroll, that is paid by him, directed by him, controlled by him. And there's been no attempt to stop the vilifying incitement that brings those young people to the streets to commit these heinous murders.

MATTHEWS: Let's go to Mr. Rahman, who's here with me as a spokesman for the PLO. Does your organization accept responsibility for the behavior today of the Al Aqsa Martyrs Brigade, which apparently one of these people committed suicide, killed 2 Israelis and injured 60?

HASAN ABDEL RAHMAN, PLO REPRESENTATIVE TO U.S.: Of course not. And as we've always indicated, we are opposed to any violence against civilians. But we hold responsible for those acts the Israeli government and the behavior of the Israeli army, which is pushing those young people to desperation.

If Mr. Gissin would just reflect on the behavior of the Israeli army when they strip men half naked, detained people in concentration camps behind barbed wires, when they are still imposing a siege on 3.2 million Palestinians, starving them literally. He must reflect on this behavior by Israel, which is leading those young men to become suicide bombers. Those young men were not born suicide bombers. They are pushed to become suicide bombers because of the conditions under which they live.

(CROSSTALK)

MATTHEWS: Mr. Gissin, do you want to respond to that, sir?

GISSIN: Yeah. I mean, this kind of duplicity and -- and you know, saying that the Israeli army -- how did we get there, in the first place? We didn't want this war. It was imposed on us 18 months ago. And the Palestinians have sent suicide bombers time and again, before there was any action by the Israeli army. Ten cease-fires -- we agreed for ten cease-fires. Yasser Arafat did not comply with even one, neither did the Palestinian leaders. And now they are exonerating and condoning and hailing those suicide bombers. Now, when a society is engaged in that, I think it is a society that's on the verge of losing any semblance of civility, just like human animals!

RAHMAN: I believe that the behavior of the Israelis against the Palestinians was characterized by no other than the secretary general of the United Nations, which he said it bordered almost -- almost -- on war crimes in the territories. When Israel moved in and killed the 300 Palestinians, arrested 3,000 -- and by the way, Mr. Gissin, this conflict did not start 18

months ago. It's been going on...

GISSIN: Oh, of course not!

RAHMAN: ... for 35 years, since Israel occupied the territories![tilde]

(CROSSTALK)

RAHMAN: And three generations -- let me finish because I waited for you to finish. Thirty-five years of occupation, illegal military occupation, in which you moved 300,000 Jewish settlers into the heart of the Palestinian towns, making the life of the Palestinian people miserable, stealing their land, their livelihood and their dignity.

You turned our people into suicide bombers, Mr. Gissin, by the way you behaved towards them. You have to take responsibility for your actions.

MATTHEWS: Mr. Gissin, let's talk about the whole question of how to deal with -- from your perspective as an Israeli, how do you deal with the fact that Yasser Arafat has limited control, apparently, over these terrorists? He has some control over the people associated with al Fatah movement, like the Al Aqsa Martyrs Brigade. There are others, like the ones who committed the crime yesterday. You had the Islamic Jihad suicide. Did you -- is that why you changed your reaction? Yesterday you went ahead with the talks...

GISSIN: No, no!

MATTHEWS: ... because it was done by somebody outside the orbit. This time because it's somebody inside the orbit of Yasser Arafat.

GISSIN: No. You're taking an assumption and making it a truth, and it's nonsense because Yasser Arafat has full control over this organization. This man that conducted today's terrorist attack, five days ago was arrested by the security forces of Yasser Arafat upon our request. And they said, "We need to transport him from Tulkarm to Ramallah." And we allowed them, thinking, "Very well, they'll put him in prison" because he was wanted. He was a ticking bomb.

And then he was released from prison, and the first time he appeared -- the next time he appeared was on the street of Jerusalem, with this heinous crime of killing innocent civilians. So Yasser Arafat could have stopped this particular man. And there are ample examples, many examples of this kind of duplicity, speaking about peace but acting acts of terror, continuing to condone terror, to incite to terror.

I'm sorry. We had enough of it. This land is also our land. It's my ancestral homeland, and I have a right to defend the citizens of Israel who are living on that land. We want peace because peace is our natural choice. But if the Palestinians decide that the way that they are going to conduct their business with us is with terrorism, then we will respond in kind.

MATTHEWS: Let's talk about the response. You start, Mr. Hasan. Does Yasser Arafat still want to go to the Arab League meeting in Beirut?

RAHMAN: He wants to. But Israel cannot treat Yasser Arafat as a prisoner in his house and expect him to behave like a president. When Israel in the last 18 months destroyed every single police station, every single vehicle, targeted policemen, targeted Palestinian leaders and killed



them, what does Israel...

MATTHEWS: Well, if...

RAHMAN: ... expect?

MATTHEWS: Let me just ask you...

RAHMAN: Yasser Arafat...

MATTHEWS: I'm not -- look...

RAHMAN: ... wants to go to the summit. And he wants to push...

MATTHEWS: Well, why didn't he stop the terrorists today?

RAHMAN: He cannot!

MATTHEWS: Why can't he stop a guy from the Al Aqsa Martyrs Brigade, who...

RAHMAN: That's absolutely...

MATTHEWS: ... is under him?

RAHMAN: ... nonsense, what Gissin said.

MATTHEWS: Well, is the Al Aqsa Martyrs Brigade part of the al Fatah movement or not?

RAHMAN: Yes!

MATTHEWS: Well, then why can't he control his own movement?

RAHMAN: Those are local groups. They are disconnected. You see, the West Bank has been dissected into 64 zones by the Israeli army. If Mr. Gissin, with the 30,000 policemen and the army and the 450 tanks, could not protect Jerusalem, he cannot expect Yasser Arafat from his prison in Ramallah to protect Jerusalem.

MATTHEWS: OK, Mr. Gissin, will the government of Ariel Sharon permit Mr. Arafat to go to the Arab League meeting in Beirut this weekend?

GISSIN: If he complies with the demands and with the requirements. On the basis of reciprocity -- we weren't there 18 months. Eighteen months ago, there was a possibility of peace. There was a political horizon. And Israel made more concessions than the Palestinians ever received from any Arab country.

MATTHEWS: Right.

GISSIN: But Arafat has chosen a strategy of terror!

(CROSSTALK)

GISSIN: And now we have to bear the consequences.

(CROSSTALK)

GISSIN: ... that strategy!

MATTHEWS: Both gentlemen, we have just -- less than a minute. Is there going to be an

agreement along the lines of General Zinni's notion? He's our diplomatic -- our mediator in your countries. Is there going to be some sort of bridging proposal accepted by both sides? You, Mr. Rahman.

RAHMAN: We want him to succeed. We are ready to work with him. But we want Israel to cooperate, in order to change the miserable conditions...

MATTHEWS: But the...

RAHMAN: ... under which the Palestinians live today.

MATTHEWS: But your demand that the government -- or the IDF withdraw its forces from the occupied territories is, in fact, being done, isn't?

RAHMAN: No! It is not. The army is still circling the cities and towns. My family cannot move from one street to the other!

MATTHEWS: OK.

RAHMAN: My nephews cannot go to school because the Israeli army makes it impossible for them to arrive there.

MATTHEWS: Mr. Gissin, is the government of Ariel Sharon, which you advise -- are they, in fact, moving to withdraw their troop from the occupied territories -- from the Arab territories?

GISSIN: I'm sorry! It's a bunch of lies! We have moved our forces from area A, where we didn't want to be, in the first place, were forced by the Palestinian...

RAHMAN: But you are encircling the cities...

GISSIN: ... terror!

RAHMAN: ... Mr. Gissin!

GISSIN: And therefore -- and...

(CROSSTALK)

GISSIN: If you would have reciprocated -- this is a decision that the Palestinian people have to take.

RAHMAN: But then what you are saying...

GISSIN: We are willing to...

MATTHEWS: What have you done to...

(CROSSTALK)

GISSIN: But they have not done anything!

RAHMAN: On the one hand, he's saying that "We will do," and on the other, he said "You have to reciprocate in order to do."

MATTHEWS: Yeah.

RAHMAN: That's nonsense!



GISSIN: No!

MATTHEWS: Well, there has to be...

GISSIN: You have a leader that you elected and selected...

(CROSSTALK)

RAHMAN: Of course!

(CROSSTALK)

GISSIN: He bears responsibility for your actions!

RAHMAN: They invaded the cities. They imposed the...

MATTHEWS: OK, we got to -- we got to...

(CROSSTALK)

MATTHEWS: Thank you very much for joining us, Mr. Rahman. It's great to have you -- Hasan Abdel Rahman, who speaks for the PLO. And it was great to have Raanan Gissin, who is a close adviser to Ariel Sharon, the prime minister of Israel. Please, both of you, come back.

Up next, the HARDBALL debate. I think we already had one. Is Israel's occupation of the Palestinian territory illegal? That's what U.N. secretary general Kofi Annan called it. We'll hear from both sides when we return on HARDBALL.

You're watching it.

(COMMERCIAL BREAK)

MATTHEWS: Welcome back to HARDBALL.

This half hour: Senator Orrin Hatch on the violence in the Mideast and on President Bush's overall foreign policy.

But first the "HARDBALL Debate": Is Israel's occupation of Palestinian territory illegal? U.N. Secretary General Kofi Annan last week demanded that Israel end its -- quote -- "illegal occupation" -- close quote -- of those lands.

But in today's "New York Times," international law specialist George Fletcher writes -- quote -- "In this time of crisis and forgetfulness, using the term 'illegal' is destructive and dangerous. For the unformed, the discussion will start with the secretary general's labeling of the occupation as a violation of law. Those who pay attention to the details of history know better."

George Fletcher joins now. He is also author of the forthcoming book "Romantics at War: Glory and Guilt in the Age of Terrorism." Also with us, Ambassador Nasser al-Kidwa, the permanent observer of Palestine to the United Nations.

Now, gentlemen, we're going to debate an issue here. You two are going to debate it. Let's stick to the particular language of Kofi Annan, the secretary general of the U.N., when he said that the Israeli occupation of the West Bank and Gaza is illegal.

Make your case, Professor Fletcher.

GEORGE FLETCHER, INTERNATIONAL LAW SPECIALIST: Fine, Chris.

To say that it's legal is not to say that it is desirable. Of course, I would prefer to see a negotiated settlement. I would prefer to see an arrangement, a peace settlement on the West Bank and in Gaza. But there's no basis for Kofi Annan's claim that this is a violation of international law. And I think his heart is in the right place. He wants to facilitate the peace process, but he just made a mistake.

MATTHEWS: Mr. Al-Kidwa, what is your position on the legality or illegality of the Israeli occupation?

**NASSER AL-KIDWA**, PALESTINIAN OBSERVER TO UNITED NATIONS: Well, the Israeli occupation is perfectly illegal, of course, under international law.

FLETCHER: Perfectly illegal, you say?

AL-KIDWA: Illegal, yes.

International law is very clear on at least two points: the inadmissibility of the acquisition of territory by force. That's one. And two: the prohibition on the transfer of the citizens of the occupying power to the occupied territories.

FLETCHER: Well, let's be clear about some facts. Israel has not annexed the West Bank.

(CROSSTALK)

AL-KIDWA: It annexed parts of the occupation territory.

(CROSSTALK)

MATTHEWS: Let's use definitions that we can use in a high school debate, both gentlemen.

If you say inadmissibility, isn't that a swift way, a clever way of saying annexed? And Israel hasn't annexed the West Bank, has it?

AL-KIDWA: Yes, it did. It did annex Jerusalem. And Israel continued in trying to change the legal status and the demographic composition of the occupied territory as a whole by transferring more than 400,000 Israeli settlers.

(CROSSTALK)

AL-KIDWA: That is completely prohibited under international law precisely to prevent the recurrence of the calamities of the Second World War, specifically the colonialism.

FLETCHER: The Geneva Convention refers to deporting and transferring. Now, the question is: Did Israel transfer its population? It didn't instruct anyone to go live in the West Bank or in Gaza. People moved voluntarily.

(CROSSTALK)

AL-KIDWA: Be more serious.

(CROSSTALK)

MATTHEWS: One at a time.



First, I'm going to Professor Fletcher make the case. Delineate exactly what you think is legal and what you think may be illegal with regard to Israel's occupation.

FLETCHER: Fine.

I think that the question of the settlements is debatable. I think that the ambassador has a point that it's arguable whether or not the Israeli government was complicitous in the voluntary decision by many people to move to the West Bank, exactly in the same way that Arafat's government is complicitous in the suicide bombings.

MATTHEWS: Well, was it entirely optional or rather voluntary?

I remember Golda Meir, one of the most impressive prime ministers of Israel, saying that the settlements constituted what she called new facts. In other words, they were useful to Israel in its negotiations.

FLETCHER: I understand that.

MATTHEWS: In other words, she was positively inclined to the point of claiming that as a diplomatic advantage.

You say that the government of Israel, under Likud governments and Labor governments -- under Likud especially -- was not advancing the cause of the settlements?

FLETCHER: Well, until 1977, the government flatly opposed any settlements. After the Begin government came to power in '77, there was a beginning of some tolerance for the settlements.

AL-KIDWA: That's not true.

(CROSSTALK)

FLETCHER: Let's distinguish the question of the settlements from the legality of the occupation.

I think that the question of the settlements is debatable. And I concede in the article that, under a peace agreement, it would be desirable to repeat what Israel did in the settlement with Egypt: that is to dismantle the settlements. They did it before and they can do it again. So, the question of the settlements is not the same question as the legality of the occupation.

(CROSSTALK)

MATTHEWS: OK, Mr. Kidwa, take a minute. Take a breath. You'll be on in a minute.

Go ahead.

AL-KIDWA: International law is very clear. There is a clear prohibition on the transfer of the citizens. And occupying

(CROSSTALK)

AL-KIDWA: Let me speak, please.

Occupying power has the responsibility there. And it's not true to say that it didn't have

anything to do with this. Let me remind you that, in the first few years, the Israeli government said that settlements are security measure. It did not mean to increase the Israeli population of the occupied territories.

(CROSSTALK)

FLETCHER: I want to find common ground with you.

Can we distinguish between the question of the settlements and the question of the occupation? I admit that the question of the settlements is debatable.

AL-KIDWA: It is not debatable.

FLETCHER: We're talking about the legality of the occupation. Can we make that distinction?

AL-KIDWA: Let me meet you half step. It's not debatable. It is completely illegal. However

(CROSSTALK)

MATTHEWS: Gentlemen, the focus of tonight's debate: to elucidate an issue which is very tricky for people who are neither Israeli nor Palestinian. Please address your remarks to those people watching the show.

AL-KIDWA: Yes, exactly.

MATTHEWS: No, Mr. Kidwa, don't change the subject. Talk about the occupation. Which U.N. resolution that you can cite declares that the Israeli forces moving into the West Bank is illegal?

AL-KIDWA: Security Council, responding to the illegal measures and practices of Israel's occupying power, adopted 26 resolutions, 26, not one or two.

FLETCHER: No, that's false, false.

(CROSSTALK)

AL-KIDWA: All of them addressed the legality of the Israeli actions. I will tell you why the Israeli occupation is illegal: not because it took place during a war. It is illegal because it has been transformed into a form of colonialism.

FLETCHER: Well, this is not legal language. This is just political talk.

Look, I agree with you, Ambassador.

AL-KIDWA: But this is the legalities of the matter.

FLETCHER: Ambassador, I agree with you. This is ultimately a political question.

The problem is: Does it help the political solution to inject this provocative language of illegal occupation? I claim that this hurts our search for common ground.

AL-KIDWA: That is a different matter. And let me respond to that.

FLETCHER: First of all, it's false and destructive of the peace process.



AL-KIDWA: That's a different matter. And let me respond to that.

I think it helps for one simple reason: because the Israelis and the Israeli government need to put their finger on the crux of the matter.

FLETCHER: If the occupation is false.

AL-KIDWA: They should see that ending the occupation is the only way forward to reach a settlement between the two sides. And, as such...

FLETCHER: This is great.

AL-KIDWA: Yes, of course.

FLETCHER: I agree with you.

(CROSSTALK)

MATTHEWS: Let's break this off. I want the next 20 seconds to go to the professor, then back to you, Mr. Kidwa.

FLETCHER: I agree. We should try to negotiate a settlement. This is why we had Camp David. This is why we have repeated efforts on the part of the Israelis and the good services of the American to propose settlements.

I'm waiting. I'm eager to hear a Palestinian peace proposal, how it would look, how it would work, how the Palestinians would recognize Israel's right to exist. We're waiting for that.

MATTHEWS: OK, let's go to Mr. Kidwa right now.

In terms of the legality, you've pointed out tonight on this program, very effectively and forcefully, that Israel has no right to annex the Golan Heights. It has no right, you argue, to annex any part of Jerusalem it didn't occupy before the '67 war. Are you arguing that the other territorial occupation, beyond the Golan Heights, beyond Jerusalem, is that illegal? Are you saying that as well?

AL-KIDWA: Yes.

MATTHEWS: Under what resolution?

AL-KIDWA: Under many resolutions...

FLETCHER: There is no resolution.

AL-KIDWA: ... including those which prohibit the transfer of civilians, prohibit settlements, and calls on Israel to dismantle these settlements.

FLETCHER: It's really a shame, Ambassador, that you can't recognize the difference between the settlements and the occupation. We're supposed to be debating the legality of the occupation.

(CROSSTALK)

AL-KIDWA: Again, the occupation was not a temporary phenomenon. It was meant to continue and meant to negate the existence of the Palestinian people and their right to self-

determination.

(CROSSTALK)

MATTHEWS: Mr. Kidwa, if the Israeli government, if the IDF continued to occupy the West Bank, but eliminated all the settlements on the West Bank, would that be legal?

AL-KIDWA: In retrospect, probably.

It should end, but without annexation, without illegal settlements. Probably that would have been a completely different kind of occupation.

MATTHEWS: Let me ask Professor Fletcher. I'm going to give you a chance in a few seconds to explain why you wrote this article. Why is it dangerous to have the secretary general use the word illegal in this regard?

FLETCHER: It's very important to recognize that we have a political problem here. And what worries me is that the use of this language of illegality will make the Palestinians intransigent and self-righteous in their resistance to reaching a peaceful settlement.

Look, if I thought myself that the occupation were illegal, I would be on the ambassador's side in this debate. I would think that it would be outrageous. But, in fact, it is not illegal. And Israel is holding on, as any occupying power would, until it can negotiate a peace settlement. That's a perfectly reasonable thing to do.

(CROSSTALK)

MATTHEWS: Mr. Ambassador, why do you think the secretary general retreated from his statement of the other day? Why is he saying he didn't quite mean it was illegal? What did he mean by that? What do you take it?

AL-KIDWA: He didn't retreat. That's not true.

He was asked by the press the next day. And he explained that the Security Council and General Assembly repeatedly indicated a position on the illegality of the Israeli occupation.

MATTHEWS: On the settlements.

AL-KIDWA: On the illegality of settlements, illegality of

(CROSSTALK)

MATTHEWS: I think you agree, actually, gentlemen. Ironically, I think both of you are arguing from different points. I think you do agree, actually.

FLETCHER: I think we do, too.

MATTHEWS: Anyway, thank you, Ambassador Nasser Al-Kidwa, and George Fletcher of Columbia University.

Up next: Should Vice President Dick Cheney meet Yasser Arafat? Good question. I'm going to ask Senator Orrin Hatch when we come back.

You're watching HARDBALL. (COMMERCIAL BREAK)